

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

ROGER FARLEY)
)
v.) No. 1:12-00179
) JUDGE CAMPBELL
UNITED STATES OF AMERICA)

ORDER

Pending before the Court is the Government's Motion To Dismiss For Lack Of Jurisdiction (Docket No. 7), and the Petitioner's Response (Docket No. 13) to the Motion.

Through the Motion, the Government argues that this action, brought under 28 U.S.C. § 2255, should be dismissed because the Petitioner's appeal of his criminal conviction and judgment is currently pending before the Sixth Circuit Court of Appeals. In his Response, the Petitioner states that he did not knowingly file a direct appeal.

On February 10, 2012, a Notice Of Appeal (Docket No. 106 in Case No. 1:10-00007) was filed in the Petitioner's underlying criminal case. The appeal was docketed in the Sixth Circuit Court of Appeals as Case No. 12-5150. Petitioner's trial counsel has filed a Motion To Withdraw in the appeals court in which he indicates that the Notice of Appeal was filed pro se.

The Sixth Circuit has held that "in the absence of extraordinary circumstances, a district court is precluded from considering a § 2255 application for relief during the pendency of the applicant's direct appeal." Capaldi v. Pontessor, 135 F.3d 1122, 1124 (6th Cir. 1998). See also United States v. Martin, 2012 WL 2368324 (W.D. Tenn. June 21, 2012). Petitioner has demonstrated no extraordinary circumstances in this case. Accordingly, the Motion To Dismiss (Docket No. 7) is GRANTED, and the Motion To Vacate (Docket No. 1) is DENIED without prejudice.

This Order shall constitute the judgment in this case pursuant to Fed. R. Civ. P. 58.

Should the Petitioner give timely notice of an appeal from this Order, such notice shall be treated as a application for a certificate of appealability, 28 U.S.C. 2253(c), which will not issue because the Petitioner has failed to make a substantial showing of the denial of a constitutional right. Castro v. United States, 310 F.3d 900 (6th Cir. 2002).

It is so ORDERED.

Todd Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE